

The Bulgarian Commission for Protection of Competition has Approved Commitments by Oil Companies Suspected of Cartel Activities

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On 28.03.2017, the Bulgarian Commission for Protection of Competition (the “**Bulgarian Commission**”) approved commitments by the leading Bulgarian oil companies Lukoil Bulgaria LTD; Eco Bulgaria JSC; Shell Bulgaria JSC, OMV Bulgaria LTD; NIS PETROL LTD. The ground for the initiation of the procedure concluded with the approval of commitments was the suspicion by the Bulgarian Commission of an infringement under Art. 15 of the Bulgarian Competition Protection Act (the “**Competition Act**”) – the almost verbatim adoption of Art. 101 TFEU.

The suspicion of coordinated behaviour and the exchange of information between the oil companies arose out of its 2016 sector inquiry, where the Bulgarian Commission found that the oil market in Bulgaria is problematic.

In the sector inquiry decision, the Bulgarian Commission concluded that the retail prices of petrol and diesel are elastic only in the upper direction, i.e. when the import and wholesale prices of petrol and diesel decreases there is a very slight decrease of the retail prices of petrol and diesel. On the contrary, upon the

increase in import and wholesale prices of petrol and diesel, the retail prices are increased almost immediately. In addition, the authority concluded that the price movements of the petrol stations of the above oil companies seem to be coordinated. What is more, the Bulgarian Commission even found exchange of information between representatives of the parties containing commercial data.

Conducting its legal and economic analysis, the Bulgarian Commission concluded that the affected markets are the market of the wholesale and retail of petrol and diesel. Despite the findings related to apparently coordinated movement of prices and the exchange of commercial information, the Commission decided that the oil market in Bulgaria became more competitive due to appearance of new oil companies since 2012. The authority found the market transparent and competitive. In addition, the Bulgarian authority adopts the view that, generally, the investigated markets are vulnerable to coordination but the prices processes are economically legitimate and the oil companies have not infringed Art. 15 of the Competition Act.

The interesting aspect of the decision is that the Bulgarian Commission did not find a cartel between the oil companies but they proposed commitments comprising:

1. prohibition of contact between the employees of the proper and the competitive gas stations;
2. prohibition of contact and exchange of information between competitors;
3. prohibition for provision , receipt or discussion of information within the oil companies association;
4. termination of employment agreements with employees violating the above prohibitions.

On one hand, the authority did not find any infringement, on the other hand the authority approved the suggested commitments by the oil companies. Under Bulgarian competition law, in order to have commitments, there is a necessity of having a breach of competition. Otherwise, the existence of the commitments has no foundation.

In addition, under Art. 75 paragraph 3 of the Competition Act, the competition authority cannot approve commitments in the case of severe breach of competition. This approach is followed also by the Rules for approval of the commitments from the Bulgarian Commission dated 09.02.2010.

An infringement under Art. 15 of the Competition Act falls within the scope of a severe breach of competition. Strictly, the Bulgarian Commission did not find violation under Art. 15 of the Competition Act. However, the authority did not find a breach of competition law at all. Thus, the question on the ground under which the Bulgarian Commission approved the commitments suggested by the oil companies remains open.

A fact worth mentioning is the existence of appeal against the decision of the Bulgarian Commission before the Supreme Administrative Court of the Republic of Bulgaria. The personal data of the applicant is confidential but it is very likely to be a physical person. After scheduling of the open court hearing of the case, the applicant revoked its appeal on 05.06.2017. The Supreme Administrative Court with Ruling dated 06.06.2017 terminated the procedure. Consequently, the decision of the Bulgarian Commission entered into force.

In conclusion, in the Republic of Bulgaria there is a precedent for cartel proceedings that concluded with commitments approved by the Bulgarian competition authority. Additionally, the Bulgarian Commission approved commitments suggested by Lukoil Bulgaria LTD; Eco Bulgaria JSC; Shell Bulgaria JSC, OMV Bulgaria LTD; NIS PETROL LTD without finding any breach of competition under Bulgarian Competition Act. It is extremely interesting what the commitments are designed to cure. The cartel or another breach of competition law? The question will continue to bother us, since the case is closed and the Bulgarian Supreme Administrative Court was deprived by the possibility to control the legality of the Bulgarian Commission for Protection of Competition's decision.